IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7322 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHITAL C JOSHI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 7322 of 1998

MR Y.N. OZA, SR. COUNSEL WITH MR. MUKESH H RATHOD for Petitioners

MR YOGESH S LAKHANI for Respondent No. 1

..... for Respondents No. 2-4

MR BS PATEL for Respondents No. 5-115

MRS RANJAN B PATEL for Respondents No. 5-115

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 21 / 1 /2002

C.A.V. JUDGEMENT

1. Shri Shital C. Joshi and others have filed this petition challenging the decision of the Gujarat State Road Transport Corporation (hereinafter referred to as `Corporation') cancelling the Select List for the post of conductor dated 12.12.1997. The petitioners further prayed that the Corporation be directed to revive the Select List for the post of conductor dated 12.12.1997 and to operate and implement the same by way of writ of mandamus or by any other writ, directions in this behalf. The petitioners further prayed that this court may be pleased to quash and set aside the non-selection of all the petitioners by the Selection Committee met on 27.8.1998 to 30.8.1998 and further direct the respondents to select all the petitioners for the post of conductors and appoint them according to Select List dated 12.12.1997 in this behalf. This petition was filed on 4.9.1998 and thereafter the court has issued notice and also partly granted interim relief.

2. The facts giving rise to this petition are as under:-

2.1 It has been submitted by the petitioners that there were vacancies available for the post of conductor in the S.T. Corporation, Godhra Division, which were required to be filled up by way of direct recruitment as per the Recruitment Procedure as prescribed in G.S.O. 503 of 1959. The Corporation, Godhra Division, had advertised for the post of conductor in July, 1997. The Corporation had called the names for such candidates from District Employment Exchange Office, Godhra, Social Welfare Office at Dahod and also from Scheduled Caste, Scheduled Tribe and Baxi Panch candidates from Godhra Office of Social Welfare Office. After receiving the names from the above offices for the post of conductors, the Corporation had served a letter to each candidates to collect the Prescribed Form for the post of conductor from the Corporation, Godhra Office on or before 10.7.1997 and to submit the said Prescribed Form on or before 17.7.1997. In the said letter dated 27.6.1997 which was issued by the Corporation, the qualification for the post of conductor was mentioned. It was further contended that after receiving the names from the Employment Exchange and Social Welfare Office, the said letter was served to each candidate and in response to it all the petitioners whose names were received by the Corporation had received the above cited letter dated 27.6.1997 from the Corporation and in response to it all the petitioners had received the Prescribed Form for the

post of conductor and filled up the same and submitted the Prescribed Form in time in the Divisional Office at Godhra.

2.2 After receiving the application forms from the candidates for the post of conductor by the respondent Corporation, the same were scrutinised by the Divisional Office at Godhra. Thereafter, Divisional Selection Committee was constituted for the selection of conductor post. There was no written test taken by the Corporation for the post of conductor and only oral interview was taken by the Corporation on 10.12.1997 to 12.12.1997 in Godhra Division Office. Three members were nominated to constitute the Divisional Selection Committee, namely, (i) Vinubhai R. Patel, non-official Member as a Board Member of the Corporation, (ii) Shri Vegad, M.E.O., of the Corporation and (iii) Shri Shah, senior D.T.O. of Surat Division of the Corporation. These are the three Committee Members constituted in Divisional Selection Committee. The constitution of Divisional Selection Committee is prescribed in G.S.O. 503/1959, Rule 5, Appendix C of the said Recruitment Procedure.

2.3 As per the aforesaid communication the interviews were commenced on 10.12.1997, 11.12.1997 and 12.12.1997 at Godhra. The said interviews were held in pursuance of the requisitions sent to the Employment Exchange, Panchmahals. The Divisional Selection Committee, after taking interviews of all the candidates for the post of conductor including the petitioners, had selected 532 candidates for the post of conductors and the Select List was published on 12.12.1997 wherein all the petitioners were selected by the Selection Committee.

2.4 On 12.12.1997 first 100 candidates of the select list were sent for training. The Divisional Controller had issued call letters to the selected candidates and had asked them to appear on 30.12.1997 before the Divisional Office, Traffic Branch, at Godhara. The said call letters were issued to 100 candidates as stated above.

2.5 It may be stated that though 100 candidates were called for training and they remained present on 30.12.1997 in the Divisional Office at Godhra, the Divisional Controller, respondent No. 2, had not allowed the said candidates for resuming the training on the ground of declaration Code of Conduct to Election of Parliament and Assembly. Therefore, the training orders were postponed and the same were notified on the Notice Board of the Division Office, Godhra.

2.6 As per the contentions of the learned counsel for the petitioners on 4.3.1998 a new Government came into power. The second respondent thereafter addressed a letter dated 17.8.1998 scrapping the select list on the ground of `administrative exigencies'. The said letter has been produced at Annexure-D (page 62 of the petition). All the petitioners were further directed to remain present on 27.8.1998 for fresh interview.

3. Being aggrieved and dissatisfied with the aforesaid action, the present petition has been filed by the petitioners. Mr. Y.N. Oza, learned senior counsel along with Mr. Rathod appeared on behalf of the petitioners. The learned counsel for the petitioners stated that the only ground given in the communication dated 17.8.1998 is that the select list has been cancelled on "administrative exigencies". However, no further reason has been given as to what are the administrative reasons. According to the learned counsel for the petitioners the main reason was that originally the petitioners were called for interview and they were selected and select list was prepared but due to change of the Government in power the select list has been scrapped and therefore scrapping of the select list is not in the merits of the matter but due to political reasons.

3.1 The learned counsel for the petitioner further submitted that in the affidavit in reply filed by the Administrative Officer dated 29.9.1998 the only ground stated in the affidavit in reply is in paragraph No. 2 at page 120. The ground given in the affidavit in reply does not stand to any reason nor does it stand for a logic. He submitted that in the said para the respondent Corporation contended that during the process of interview one Mr. M.R. Thakore, President of Panchmahal District Kshatriya Sabha and President of Sarvoday Consumer Protection Committee of Talal Darwaja, Godhra, sent a complaint directly to the Hon'ble Chief Minister of Gujarat. In the said complaint they specifically made serious allegation that some irregularities are being committed while selecting persons for the post of conductors. It was stated that one Board Member of the Corporation, namely, Pappu Gadaiyalu who is a local person, has tried to misuse his post and who unlawfully entered within the premises of chamber of Officers who were holding the selection and has also abused the Members of Selection Committee. It is further stated that pursuant to the said complaint, some enquiry was held at the level of the Hon'ble Chief Minister and

ultimately the complaint was forwarded to the Corporation to look into the matter. Thereafter, subsequent thereto a letter written by the Section Officer, Home Department, issued to the Corporation wherein the Corporation was directed to submit a detailed report in this regard and accordingly the Corporation made a detailed enquiry and also prepared a detailed report in this regard. Ultimately this report was sent to the Government and after going through the said report the Government also thought it fit not to go ahead with the further process of the recruitment of conductors. Accordingly the Government sent a letter dated 20.3.1998 wherein the Corporation was specifically directed not to take any such decision in this regard nor to make any appointment from the select list and that the said fact was made known to the concerned Divisional Controller of Godhra Division.

3.2 The learned counsel for the petitioner submitted that the reasons given are not germane reasons for cancelling the select list. He submitted that the said reasons do not stand to any logic. These reasons are very vague, arbitrary and unsustainable. The learned counsel for the petitioner further submitted that what is more important is that it is not stated in the affidavit in reply as to whether the enquiry was conducted in pursuance of the said complaint and what type of enquiry was conducted. On the contrary, a bare reading of second paragraph of the affidavit in reply would show that, because of change of political scenario in the State and because of internal political fight, the petitioners are made to suffer. He further submitted that no selection process can be challenged unless it is shown that it has influenced the Members of the Selection Committee or he has used force by virtue of which he has got the things done in the manner he likes. Simply because some one enters the room where the selection is undertaken and abuses the Members of the Selection Committee, the whole selection process cannot be scrapped, unless the Members of the Selection Committee themselves later on reported that undue pressure has been exerted or under threat that they have been compelled to do something wrong or unless it is shown that such action has been influenced the Members of the Selection Committee. He submitted that no complaint was made by Mahendrasinh R. Thakore till the political scenario was changed at Gandhinagar. If there was anything wrong which was committed, nobody prevented Mahendrasinh R. Thakore from lodging the complaint forthwith and not to sit idle for a period of three months and wait till the political scenario changes. Even if the application of Mahendrasinh R. Thakore is

looked into, there are no grounds given as to why Mahendrasinh R. Thakore sat idle for three months and no justification is coming forth explaining the delay.

3.3 The learned counsel for the petitioner relied on the judgement of the Hon'ble Supreme Court in the case of BENNY T.D. AND OTHERS VS. REGISTRAR OF CO-OPERATIVE SOCIETIES AND ANOTHER reported in 1998 SCC (L & S) 1338. He has relied on para 20 of the said judgment at page 1349 which reads thus:

"Apart from the aforesaid questions which are common in respect of recruitment in both the Banks, in case of Kottayam Bank, the Division Bench of the High Court had categorically found that the recruitment itself is vitiated on account of large scale malpractice. It may be stated that the Registrar while issuing notice under Rule 176 of the Rules to the Board of Directors of Kottayam District Co-operative Bank by letter dated 24.7.1986 did not indicate about any large scale malpractice adopted in the test conducted by the Bank excepting to the effect: "The marks awarded and the consolidated arks records are corrected and manipulated." Some of the candidates were given less marks and some others were given higher marks. But while considering the legality of the resolutions passed by the Bank appointing several persons, the Registrar took into consideration the so-called report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission who had directed for a detailed enquiry and on that basis came to the ultimate conclusion that the appointment of candidates made by the Kottayam District Co-operative Bank is vitiated. The learned Single Judge came to the conclusion, and in our opinion rightly, that in the absence of any detailed particulars of the alleged irregularities in the notice issued to the Bank under Rule 176 and in the absence of the report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission being made available to the Bank or the persons appointed, it is not open to the Registrar to come to the conclusion about the irregularity and the said conclusion is vitiated on account of gross violation of the principle of natural justice. The Division Bench, however, disagreed with the conclusion of the learned Single Judge on this score and relied upon the report of the

Commission and came to hold that the entire selection process was vitiated by illegality and irregularity and therefore there is no other option than to cancel the appointments of all the candidates. The Division Bench was conscious of the fact that the persons to be adversely affected by the impugned decision had not been given an opportunity inasmuch as the relevant documents had not been put to them nor even to the Bank who made recruitment but yet brushed aside the principle of natural justice and did not focus its attention to the same and on the other hand came to the conclusion that the process of selection got vitiated on account of alleged irregularity and illegality. In our considered opinion, the Division Bench patently committed an error in relying upon the report of the Commission and in recording a finding that irregularities have been committed in the selection notwithstanding the fact that the said report had not been made available to the Bank or to the affected parties. That apart, as stated earlier in the notice that was issued by the Registrar, there were no particulars given and on such vague assertions made, it was not permissible to record a conclusion that there has been any irregularity in the process of selection. The said conclusion of the Division Bench must accordingly be set aside."

3.4 The learned counsel for the petitioners further relied on the judgement of the Hon'ble Supreme Court in the case of A.P. AGGARWAL VS. GOVERNMENT OF NCT OF DELHI AND ANOTHER reported in 2000 SCC (L&S) 206 in which on pages 210 and 211 at paragraphs 10, 11, and 12 the Hon'ble Supreme Court has held as under:

3.4A "Para 11 - In our opinion, this is a case of conferment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. Even if it is to be said that the instructions contained in the office memorandum dated 14.5.1987 are discretionary and not mandatory, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is

conferred and also satisfy the mandatory requirement of the statute. It is not therefore open to the Government to ignore the panel which was already approved and accepted by it and resort to a fresh selection process without giving any proper reason for resorting to the same. It is not the case of the Government at any state that the appellant is not fit to occupy the post. No attempt was made before the Tribunal or before this Court to place any valid reason for ignoring the appellant and launching a fresh process of selection."

3.4B "para 12 - It is well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us (vide Shrilekha Vidyarthi Vs. State of U.P. (1991) 1 SCC 212)".

3.5 The learned counsel for the petitioner also placed reliance on the decision of the Hon'ble Supreme Court in the case of MUNNA ROY VS. UNION OF INDIA & ORS reported in 2000 III CLR 356 in which at para 2 it is observed thus:

3.5A "While the application was pending before the Tribunal, the Railway Recruitment Board cancelled the panel by order dated 5.9.1996 on the ground that there has been sufficient irregularities in the matter of selection, the appellant, therefore, filed an application before the Tribunal for setting aside the order of cancellation and directing the Board to complete the recruitment process. The Tribunal allowed the said application. Against the order of the Tribunal, the matter was taken to the High Court and the High Court having interfered with the order of the Tribunal, the appellant has approached this Court. The High Court while interfering with the order of the Tribunal, has taken into consideration the fact that mere inclusion of a person's name in the list does not confer any right and, therefore, Mandamus cannot be issued. The aforesaid enunciation as a proposition of law cannot be disputed. However, if the administrative authority takes a decision and the reasons for such decision are erroneous then such a decision can be interfered with by Court of Law."

3.6 Relying on the above judgements the learned counsel for the petitioners submitted that if malpractice is alleged then inference of malpractice cannot be drawn ipse-dixit. The details of malpractice are required to be given. He submitted that the reason which was given was `that the marks awarded and the consolidated marks recorded are corrected and manipulated'. Even the aforesaid ground without specific details, was held to be bad. He further submitted that the persons affected must be given an opportunity of being heard and also be supplied materials against them.

3.7 The learned counsel for the petitioners further submitted that there is no report worth the name, there is no enquiry worth the name excepting a so-called letter of one President of a community on which there has been no fulfledged enquiry. The learned counsel for the petitioners further submitted that the select list can be cancelled on germane grounds and not on arbitrary and irrational grounds. He further submitted that on assigning specific details about the grounds which have weighed with the authorities for cancellation of the select list, the same can be cancelled.

3.8 The learned counsel for the petitioner further submitted that all these decisions go to show that the conclusion of malpractice should be based on cogent reasons, it must spell out specific details and must be made on germane grounds. In other words, the conclusion of malpractice cannot be reached on arbitrary and irrational grounds.

3.9 The learned counsel for the petitioners has submitted there is not an iota of allegation against any single candidate being involved in malpractice or the Members of the Selection Committee involved in malpractice. It is not a case of mass malpractice or any irregularity or illegality done by the Members of the Selection Committee. The learned counsel for the petitioners further submitted that in this case every candidate was selected and there is a cancellation of select list which was already prepared and not a case of non-selection after the interview. The learned counsel for the petitioners submitted that there is no allegation either against the candidates or the Members of the Selection Committee and therefore in this case there is no word about unfair practice or injudicious manner on the part of the Selection Committee.

3.10 The learned counsel for the petitioners has

further submitted that in any view of the matter when the selection is bad on the ground that a bare reading of the affidavit in reply of the Corporation shows that there has to be three members in the selection panel as per the resolution dated 15.7.1993 in running page 125. The said resolution is also annexed at page 95. The affidavit in reply itself shows that on the day of the subsequent selection though the minimum quorum is three, only two Members were present. The ground given is that the third Member could not attend for his personal reasons and therefore with a view to see that the candidates are not put to inconvenience, instead of 10 marks to be allotted by each Member, two Members were allowed to allot 15 marks each. A bare reading of affidavit in reply itself clinches the issue that the second selection made is unlawful because when the Rules require that the selection panel has to consist of three Members, on the ground of inconvenience to one of the Members, no go-bye can be given to the Rules. If the Rule requires that the selection panel has to consist of three Members, simply on the ground that the candidates may be put to inconvenience a complete go-bye to the Rules cannot be committed. In fact, for want of quorum the selection process ought to have been cancelled rather than by passing the Rules, which have a binding effect.

3.11 The learned counsel further submitted that in any view of the matter, fresh selection process cannot be undertaken assigning proper reasons and if it is undertaken, then a writ of mandamus can be issued in the form of direction to make the appointments. In this case no reasons, whatsoever kind, are given for fresh selection and therefore, it is arbitrary.

4. On the other hand, Mr. Y.S. Lakhani, learned counsel, has appeared on behalf of the respondent. He has invited my attention to the letter dated 17.8.1998 at page 62 which I have referred earlier in this behalf. He has also relied on para 2 of the affidavit in reply dated 29.9.1998 filed by Shri Laljibhai Devshibhai Babaria, Administrative Officer which I have referred earlier in this behalf.

4.1 It may be noted that this matter was heard and thereafter the learned counsel for the Corporation has prayed for some time to file further affidavit. The learned counsel for the Corporation stated that if it is allowed to file affidavit the same will facilitate the learned advocate for the petitioner and the court to deal with the same and therefore permission was granted.

Therefore, the affidavit of Corporation is filed. This being the matter of 1998 and affecting a large number of people, this court granted permission to the learned counsel for the Corporation to file further affidavit in reply. Pursuant to that the Corporation has filed further affidavit on 16.10.2001. He has also invited my attention to the original files by which the Corporation has taken decisions to cancel the select list. In the said affidavit dated 16.10.2001 what was stated earlier was reiterated.

4.2 Learned counsel for the respondent further submitted that it is no doubt true that interview was held on 10/12/1997, 11/12/1997 and 12/12/1997 and the select list was declared on 12.12.1997 and so also on the very day i.e. on 12.12.1997 the first 100 persons of the select list were sent for undergoing training. It is also not in dispute that on 25.12.1997 code of conduct came into force and the reigns of powers in the State changed on 4.3.1998 but change of powers in the State on 4.3.1998 has noting to do with the present matter. As immediately after declaration of the select list on 12.12.1997 a complaint came to be filed by Mr. Mahendrasinh R. Thakore on 15.12.1997. On receiving the said complaint as well as other complaints and the news items the then Transport Minister of earlier Government forwarded the said complaint to Chairman of the Corporation. Accordingly, on receiving instruction from the State Government a detailed enquiry was conducted and on finding some substance that gross irregularities were committed while selecting candidates for the post of conductors the said select list came to be cancelled and the new letters were sent to each of the candidates who appeared in the earlier selection process and therefore it cannot be said that no notice were served upon it before cancellation of the said select list.

4.3 It was further stated that the State of Gujarat thorough the Home Department addressed a letter to the Vice Chairman and Managing Director of the Corporation dated 19.2.1998 enclosing therewith the letter of Mr. Thakore as well as the letter of Anti Corruption Bureau for doing the needful and to send the report thereon immediately. It was further submitted that by the time the said letter was received by the Corporation, the vigilance enquiry was already ordered by the Corporation under the orders of the Vice Chairman and Managing Director of the Corporation on 2.1.1998. It was further submitted that the enquiry by the Vigilance Department of the Corporation was undertaken and a report of the Vigilance Department was submitted to the Corporation by

that time on 20.2.1998. A copy of the Enquiry Report submitted by the Vigilance Department of the Corporation is annexed with the reply.

4.4 It was further submitted that on the basis of the said report submitted by the Vigilance Department of the Corporation, the Vice Chairman and the Managing Director of the GSRTC submitted a report to the Additional Chief Secretary, Home Department (Transport), State of Gujarat on 4.4.1998 and a further report dated 16.4.1998. It was further submitted that on the basis of the said report based on the report of the Vigilance Department of the Corporation, the State Government approved the suggestion made by the Vice Chairman and Managing Director of the Corporation as the transparency is not maintained in the process of selection of the candidates of Godhra Division instead of undergoing whole recruitment process afresh, the selection process be undertaken afresh. It was submitted that the earlier selection list was cancelled. A fresh selection process was undertaken by giving opportunity to all those 1002 candidates who were first called at the time of earlier selection process specifically mentioning in the second call letter that the select list earlier prepared is already cancelled on the administrative reasons and that they are required to remain present at Gandhinagar before the Selection Committee again. It was submitted that none of such candidates at any earlier point of time than the dates of the selection process so held afresh at Gandhinagar made any grievance whatsoever and thereby they have abandoned their right to challenge the preparation of the select list afresh even otherwise. It was further submitted that all the petitioners are estopped from making any grievance against the fresh selection process undertaken by the Corporation as all of them have been given a proper and due opportunity to appear before the Selection Committee and having found that their names are not figuring in the select list so prepared, they have filed the present petition before this court and the filing of the petition is clearly an afterthought, therefore liable to be rejected.

4.5 It was further submitted that reason for cancelling the select list prepared at the first point of time by the Corporation is completely and fully germane to the action taken by the corporation on the basis of the allegations levelled and the report Vigilance Department of the Corporation as well as administrative lacuna as referred to in para 5 of the reply and therefore the action of the Corporation is fully justified in the larger public interest and therefore

also this petition is not required to be entertained and the same deserves rejection.

4.6 It was submitted that on the contrary, separate interview call for oral interview or second oral interview were sent to them with a clarification that the earlier select list has been scrapped and therefore fresh oral interviews are to be conducted. On receiving such call letters for the second oral interview, the same has not been challenged, and participated in interview. The candidates who could not succeed in second oral interview had approached this court. It cannot be said that because of change in the political scenario in the State and because of the internal political fight the petitioners are made to suffer.

4.7 It was further submitted that it is also not true and correct that no enquiry was conducted by the Corporation before cancelling the said select list. On the contrary after receiving a letter from the Secretary (Home) by the Managing Director, a detailed enquiry was made and on finding some substance in the complaints the said list was cancelled with permission of the Government. It was decided to hold fresh oral interview instead of conducting entire selection process afresh and as all these correspondences are confidential in nature, the same were not placed; however the same are kept ready for perusal of this court. The learned counsel for the respondent further submitted that the on the basis of the same, fresh affidavit filed. A complaint filed in this behalf and a detailed enquiry was conducted.

4.8 It was further stated that it is not true and correct that the said complaint by Mr. Mahendra R. Thakore was lodged after a lapse of three months. After waiting for change of political scenario efforts are made only to show that the entire exercise has been done at the instance of political level but it is not true and correct, because of the fact that the complaints were received by earlier ruling partly and even enquiry was ordered to be made by the very then Government which was acting as a caretaker Government at the relevant point of time. This change of political scenario has nothing to do with the matters of recruitment of conductors in the Corporation. Merely because it coincides with the incident it cannot be said that everything has been done at the political level and therefore the allegations levelled that the entire exercise has been done because of change of political scenario is not true and correct.

4.9 This matter was heard earlier. Thereafter, the

learned counsel for the respondent has also pointed that if the petition is allowed, the respondent Corporation will suffer great injury, hardship and loss which cannot be compensated in terms of money. He submitted when the matter was filed before this court pursuant to the order of this court, the Corporation is allowed to appoint candidates and 309 ad hoc persons have been appointed in Godhra Division. Godhra Division has taken 50 per cent as loan from Nadiad Division and 50 per cent as loan from Surat Division so in all 409 persons were on the pay roll of Godhra Division. He further submitted that the Corporation is suffering heavy loss in operating its business and about 32 conductors who have taken loan from Surat Division have been discharged in this behalf.

4.10 If the petition is allowed then all these 409 persons will be affected by virtue of the order of this court and therefore this court may not entertain this petition and reject it in this behalf on the ground of balance of convenience.

4.11 The learned counsel for the respondent Corporation has relied on the judgement of the Hon'ble Supreme Court in the case of UNION TERRITORY OF CHANDIGARH VS. DILBAGH SINGH & ORS. reported in (1993) II LLJ 1043 in which on page 1047 at para 12 the Hon'ble Supreme Court has held thus:

4.11A "If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expection of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily."

4.12 The learned counsel for the respondent has further relied on the decision of the Hon'ble Supreme Court in the case of BISWA RANJAN SAHOO & ORS. VS. SUSHANTA KUMAR DINDA & ORS. reported in (1996) II LLJ 763 in which on page 764 at para 3 the Hon'ble Supreme Court has observed as under:

"A perusal thereof would indicate the enormity of mal-practices in the selection process. The question, therefore, is: whether the principle of natural justice is required to be followed by issuing notice to the selected persons and hearing them? It is true, as contended by Mr. Santhosh Hegde, learned senior counsel appearing for the petitioners, that in the case of selection of an individual his selection is not found correct in accordance with law, necessarily, a notice is required to be issued and opportunity be given. In a case like mass mal-practice as noted by the Tribunal, as extracted hereinbefore, the question emerges: Whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment. The procedure adopted is in flagrant breach of the rules offending Articles 14 and 16 of the Constitution."

4.13 The learned counsel for the respondent has further relied on the decision of the Hon'ble Supreme Court in the case of NATIONAL INSTITUTE OF MENTAL HEALTH & NEURO SCIENCES VS. DR. K. KALYANA RAMAN & ORS. reported in (1992) II LLJ 616 in which on page 617 at para 7 the Hon'ble Supreme Court has held as follows:

4.13A "We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons."

4.14 The learned counsel for the respondent has

further relied on the decision of the Hon'ble Supreme Court in the case of UNION OF INDIA AND ORS. VS. ANAND KUMAR PANDEY & ORS. reported in (1995) II LLJ 25 in which on pages 27-28 at para 9 the Hon'ble Supreme Court has held as under:

4.14A "This Court has repeatedly held that the rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. Out of the total candidates who appeared in the Written test at the centre concerned only 35 candidates qualified the test. In that situation the action of the railway authorities in directing the 35 candidates of centre 115 to appear in a fresh written examination virtually amounts to cancelling the result of the said centre. Although it would have been fair to call upon all the candidates who appeared from centre 115 to take the Written examination again but in the facts and circumstances of this case no fault can be found with the action of the railway authorities in calling upon 35 (empanelled candidates) to take the examination afresh. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different than an examination held by a college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case the railway authorities have rightly refused to make appointments on the basis of the Written examination wherein unfair means were adopted by the candidates. No candidate had been debarred or disqualified from taking the examination. To make sure that the deserving candidates are selected the respondents have been asked to go through the process of written examination once again. We are of the view that there is no violation of the rules of natural justice in any manner in the facts and circumstances of this case."

4.15 The learned counsel for the respondent has also referred to letter dated 15.12.1997 and the report dated 20.2.1998 and pointed out several irregularities during the course of interview. He submitted that a cloud of suspicion has been raised against the Selection

Committee. It is no doubt that the Committee could not be able to come to the conclusion that there were no irregularities nonetheless the Committee has given about seven reasons which show that there were several irregularities committed and the Committee has recommended scrapping of the selection process and to call for fresh interview. He submitted that when the selection of large number of people for the appointment of conductor by the public Corporation has to be done, the same should be beyond any shadow of doubt and people cannot put any suspicion against the same when such large number of irregularities is committed. Though, in the best interest of the Corporation, people are appointed and subsequently the said selection process and appoints are challenged it will put great financial burden on the Corporation. Therefore, the Corporation has cancelled the selection process and called for fresh interview after departmental enquiry in this behalf.

MY CONCLUSION:

6. I have considered the rival submissions, pleadings, the contentions raised in the petition, the contentions raised in the earlier affidavit in reply, subsequent affidavit in reply and the written submissions filed by the petitioners as well as by the respondents in this behalf. I have also gone through the report submitted by the authority based on which the entire select list has been cancelled. In my view the authority has completely satisfied this court that there was already a letter dated 15.12.1997 and on the basis of the said letter a report is submitted on 20.2.1998. I have perused the list of documents which have been submitted along with the report and also the contents of the report in this behalf.

6.1 The contents of the report which has been annexed with the affidavit dated 16.10.2001 filed by Laljibhai Babaria on behalf of the respondent Gujarat State Road Transport Corporation show the following irregularities:

(i) During 10th December, 1997 to 12th December, 1997 when the Selection Committee met on previous day i.e. on 9.12.1997 the Hon'ble Minister met the Officers of the Corporation along with relevant record.

(ii) Before the meeting of the Selection Committee on 10.12.1997, the employees have given names of

their children to the Selection Committee.

(iii) When the interview was actually going on, on 12.12.1997 the Director of the Corporation Mr. Gadaiyalu met the members of the Selection Committee and it has been alleged that the Director has tried to influence the working of the Committee.

(iv) On 12.12.1997 when interview was going on members of the Selection Committee members of the Committee have gone to the residence of the Director Mr. Gadaiyalu for lunch.

(v) On 10.12.1997 when the working of the Interview Committee was going on the Hon'ble Minister of State Mr. Somsingh Chauhan came to the Committee room and met the Director Shri Vinubhai, a member of the Committee discussed the same and thereafter on 15.12.1997 the same Hon'ble Minister has called for the results of the interview which were sent to him.

(vi) The Director of Godhra Division surrender to the desire of the Union Leader who gave list of employees' children on 10.12.1997 to the Selection Committee which they ought not to have given.

(vii) The Selection Committee has accepted the list of children of the employees which shows that the Committee has lacked its bona fide in the working of the Selection Committee. There are clouds of suspicion against the Selection Committee.

6.2 Despite of these allegations, the report has stated that there is no financial irregularity. It may be true that there is no financial irregularity. The report states serious allegations against the Committee and about transparency of the selection process and it appears that there is gross irregularity committed and a cloud of suspicion is levelled against the selection process. Therefore, in my view, the Corporation is fully justified in cancelling the selection list.

6.3 In my view the contention of the petitioners that the said selection has been cancelled on the political ground, the same has been clearly denied by the respondents. I have also gone through the records of the case. In my view there is no question of cancelling the selection list on the ground of political reason because

the entire select list members have been given literature inviting from fresh interview, there was no need for fresh hearing to the concerned because merely placing the name of the candidate in the select list did not confer any vested right on the candidate that he would be appointed sanctioned post. Even rules of natural justice do not require that persons are to be heard individually when there is allegation of mass malpractices in this behalf in the process of selection.

6.4 The decisions cited by the learned counsel for the petitioners are not applicable. On the other hand the decisions cited by the respondents are fully applicable to the facts of the case. In my view the process of selection is illegal and the Corporation has based upon the report of the Committee after receiving the complaint has cancelled the select list in the behalf and the additional affidavit filed gives clear and cogent reasons by the Corporation for cancelling the select list. Therefore, I do not see any reason to interfere with the decision of the Corporation. The petition is therefore required to be rejected.

6.4A The rule of natural justice, namely, nemo judex in causa sua and audi alteram partem have a definite meaning and connotation in law, and their content and implications are well understood and fairly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible.

6.4B In my view, the observance of the principles of natural justice may be dispensed with where the enquiry is of a confidential nature and disclosure of information may defeat the object of the statute. A principle of judicial inquiry, whether fundamental or not, is only a means to an end. If it can be shown in any particular class of case that the observance of a principle of this sort does not serve the ends of justice, it must be dismissed otherwise it would become the master instead of the servant of justice. In this case when there is an inquiry conducted which is in confidential nature, no useful purpose would be served in providing an opportunity of being heard to persons who are already affected. In fact their names were put in select list which does not give any right to them to claim appointment. Therefore, the Corporation has rightly not

afforded any opportunity of being heard to these persons and instead of having fresh interview to all persons including the persons whose names were already put in select list. In these circumstances, the contention of the learned counsel for the petitioners that there is violation of rules of natural justice cannot be accepted.

6.4C In my view the principle of natural justice can be excluded in case of confidentiality. In the case of MALAK SINGH VS. STATE OF PUNJAB (1981) 1 SCC 420, the Hon'ble Supreme Court held that the maintenance of surveillance register by the police is a confidential document. Neither the person whose name is entered int he register nor any other member of the public can have access to it. The observance of the principles of natural justice in such a situation may defeat the very purpose of surveillance and there is every possibility of the ends of justice being defeated instead of being served.

6.5 As regards the process of selection is concerned, in my view the Corporation has given reasons as to why there were two Members. The process of selection is not statutory but only directory. The petitioners cannot challenge the same. In fact the petitioners have participated in the selection process and they have not challenged the same therefore they have clearly acquiesced in the selection process.

7 In the result the petition is rejected. Rule is discharged. No order as to costs.

(K.M. MEHTA, J)
(pkn)